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International Association of Machinists and Aerospace Workers District Lodge 160, Local Lodge 289 and SSA Marine, Inc. and International Longshore and Warehouse Union. Case 19–CD–502

December 15, 2010

## DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER AND PEARCE

On January 22, 2010, the two sitting members of the Board issued a Decision and Determination of Dispute in this proceeding, which is reported at 355 NLRB No. 3. On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. On October 15, 2010, SSA Marine, Inc. (the Employer) filed a request with the Board for expedited reconsideration of the case by a panel of at least three members. <sup>2</sup>

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has decided that employees represented by the International Longshore and Warehouse Union are entitled to perform the work in dispute for the reasons stated in the decision reported at 355 NLRB No. 3 (2010), which is incorporated herein by reference.

## DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

- 1. Employees of SSA Marine, represented by the International Longshore and Warehouse Union, are entitled to perform maintenance and repair work on SSA Marine's stevedoring and terminal service power equipment while it is present at Terminal 91 in Seattle, Washington.
- 2. International Association of Machinists and Aerospace Workers District Lodge 160, Local Lodge 289 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force the Employer to assign the disputed work to workers represented by it.
- 3. Within 14 days from this date, International Association of Machinists and Aerospace Workers District Lodge 160, Local Lodge 289 shall notify the Regional Director for Region 19 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.

Dated, Washington, D.C. December 15, 2010

Wiln	na B. Liebman,	Chairman
Crai	g Becker,	Member
Marl	Gaston Pearce,	Member
(SEAL)	NATIONAL LABOR F	RELATIONS BOARD

<sup>&</sup>lt;sup>1</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

<sup>&</sup>lt;sup>2</sup> By letter to the Board dated October 18, 2010, the International Association of Machinists (the IAM) objected to the Employer's request for expedited reconsideration, characterizing it as an "attempt to submit further briefing to the Board on the merits of the underlying 10(k) dispute." Specifically, the IAM objected to the Employer's purported failure to "limit its letter to a simple request[] for an expedited ruling." In resolving this jurisdictional dispute, we rely solely on the 10(k) record that is properly before the Board, which includes the hearing officer's report, hearing transcript, exhibits, and posthearing briefs. See Board Rules and Regulations Sec. 101.35.